Her children of the laboring brain,
These are the champions of the race,
True parents, and the sole humane,
With understanding for their base.

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ENGLISH DIVORCE LAW AND THE REPORT OF THE ROYAL COMMISSION.

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THAT English law in relation to Divorce stands in need of amendment is very generally admitted. It has grown up haphazard, in the interest of the ruling classes, and bears no relation to the needs of the people at large. Until 1857 a decree of divorce could only be obtained by a lengthy process, culminating in a private act of Parliament, and costing from £500 to £600. In 1857 the jurisdiction previously exercised by the Ecclesiastical Court was transferred, and is now exercised by the High Court of Justice in the Probate, Divorce, and Admiralty Division. The causes for which divorce is granted are briefly: to the husband on the ground of adultery on the part of the wife; to the wife on the ground of aggravated adultery, or adultery coupled with cruelty or with desertion for two years and upwards on the part of the husband.

On three main points all members of the Commission which has recently reported were agreed. The first is, that the form of procedure necessary to obtain a divorce still tells very heavily,—almost prohibitively,—against the poor. Cases can be tried only before the High Court sitting in London, and that at a cost which makes it practically impossible for the great majority of people. The average minimum cost of an undefended case from London is stated to be about £40 to £45, and considerably higher if from the country; while the cost of an ordinary

class of defended case varies from £70 to £500. It is open to those whose income is not above thirty-two shillings weekly to sue *in forma pauperis,* but the procedure is difficult and very few such cases are heard. The Commissioners came to the conclusion that beyond all doubt the present means of administering the law are such as to place it beyond the reach of the poor. It is clear that if divorce is allowed at all, a grave injustice is done by withholding it from the reach of those to whom, owing to their straitened circumstances, the need for relief may be the greatest. It ought not to be regarded as a luxury in which the rich may indulge, but which the poor must forego. Recommendations are therefore made in the Report for utilizing local courts with a simplified form of procedure.

The second important point upon which all the Commissioners were agreed is, that there should be equality of the sexes before the law. This has long been the case in Scottish law, where the wife can sue for a divorce on the ground of her husband's adultery, apart from any additional cruelty or desertion, and if successful, is at once entitled to the same share of his estate as if he were dead. In his evidence the Scottish Judge, Lord Salvesen, said: "I think our law conduces very much to the morality of husbands and to the peace of families." The great majority of witnesses were agreed in favor of equality, but there were some who took the view that an act of adultery on the part of the husband might be considered as more or less 'accidental.' On the other hand, the evidence was very strong that such 'accidental' acts might be fraught with most serious danger to the health of wife and children; and the Commissioners,—rightly as it seems to us,—considered that while they "do not overlook the arguments founded on physiological considerations, and the different consequences of immorality in one case or the other," these arguments are outweighed by other considerations. They recommend, therefore, that "whatever grounds are permitted to a

husband for obtaining a divorce from his wife, the same grounds shall be available for a wife in a suit against her husband."

On one more point of first importance the Commissioners were agreed, and that is as to the harm done by the present system of reporting divorce cases in detail. In this matter they had to weigh the deterrent effects of publicity against the injury to public morality, and their recommendations seem well adapted to secure the desired ends. They are briefly: that the judge hearing a case should be expressly empowered to close the court for the whole or part of a case, or to order that portions of the proceedings should not be reported or published; that there should be no publication of a report of a case till after the case is finished; and that pictorial representation of parties concerned should be absolutely prohibited. There seems little doubt that if effect is given to these recommendations there will be a wholesome check to the morbid curiosity to which the daily press now panders.

We have now to deal with that part of the Report as to which the Commissioners were not agreed: the majority desiring to extend the grounds for which divorce might be granted; the minority desiring to restrict them to those already accepted. And, first, we must point out that in considering whether or no any new causes for divorce should be allowed, it is important to remember that in England, since 1895, a considerable amount of relief has been possible by way of "separation and maintenance orders." There is no doubt that the injustice of the Divorce Law in respect of the poor has been greatly alleviated by means of these orders, which serve as a protection against the worse forms of ill-treatment between man and wife. These orders may be granted by a magistrate in favor of a wife on the grounds of assault, desertion, persistent cruelty, or wilful neglect to provide maintenance on the part of the husband; and they may provide that the wife is no longer bound to cohabit with her husband, that she has legal custody of the children under

sixteen, and that the husband shall pay for maintenance a sum not exceeding £2 per week. Further, either husband or wife may apply if the other is an habitual drunkard, and obtain a similar order, with the addition that the wife (if she is the offending party) may, with her own consent, be committed to an Inebriates' Home. Separation under these orders is permanent unless and until the parties concerned become reconciled; *i. e.,* they remain man and wife, debarred from contracting another marriage, but able when they will to resume the normal relations of man and wife together.

It is here that the parting of the ways between the two sections of the Commission begins. The majority recommend that the courts of summary jurisdiction should not have power to make orders for permanent separation, but only for two years; and that, if a permanent order should be necessary, the case should be referred to a superior court for a judicial separation or a divorce. As permanent judicial separation is subsequently condemned, this means that divorce is recommended for all cases where separation for more than two years would be granted.

In dealing with this point it would seem that the majority have hardly done justice to the evidence before them. On their own showing a very large proportion of the persons separated by such orders become reconciled afterwards. We are not told how many of these reconciliations took place after a period of two years; but we agree with the minority that "the decisive reason why the attempt to class separation orders with decrees for divorce and permanent judicial separation is misconceived is that the former are not in fact permanent at all. They come to an end *ipso facto* whenever the parties choose to reunite, and the evidence has made it overwhelmingly clear that these orders in most cases remain in force for a short time only."

The reason for which the majority desire to limit separation as above is, that they consider it conduces to im-

morality, the parties concerned being driven to irregular unions because they are not free to marry again. The evidence on this point is very conflicting. Many witnesses think that separation orders lead to bad results. On the other hand, the clerks to justices throughout England and Wales, being asked whether there is reason to suppose that the orders lead to immorality, reply in the negative to the number of one hundred and four out of one hundred and forty-one. It is clear that the risk of irregular connections must be weighed against the risk of placing any obstacle in the way of reconciliations. The separation order is invaluable as a means of protection to the injured party; but that protection being granted, the opportunity should be left open as long as possible for the reunion which experience shows to be so frequent. The suggestion that the parties come together again largely because of the increased cost of living separately, carries with it the further implication that the respondent, upon whose application the divorce is to be considered, will not really be placed by it in a position to marry again, since he will still be responsible for the maintenance of his divorced wife. It is noteworthy that one of the signatories to the Report, Mrs. Tennant, is opposed to this leniency to the respondent; while another, Mr. J. A. Spender, would increase it by giving him or her the *right* to a decree of divorce after the lapse of three years from the decree of separation.

The above recommendations for making separation orders introductory to divorce involve the further proposals for extending the ground upon which divorce should be granted. It is here that we come to the most delicate and debatable part of the task laid upon the Commissioners. For the minority the matter was simple; guided by the one principle that marriage is indissoluble except in the case of adultery they had nothing to do but to reject any extension. But the majority laid down for themselves two principles which are much more difficult of application.

In considering what law should be laid down in the best interests of the whole community, the State should be guided by two principles: (1) No law should be so harsh as to lead to its common disregard. (2) No law should be so lax as to lessen the regard for the sanctity of marriage (p. 95).

It appears to us that those who allow the vague fear of possible injury to morality to exclude all other considerations, act in conflict with the first principle. The alternative is to recognize human needs, that divorce is not a disease, but a remedy for a disease, that homes are not broken up by a court, but by causes to which we have already sufficiently referred, and that the law should be such as would give relief where serious causes intervene, which are generally or properly recognized as leading to the break-up of married life. If a reasonable law, based upon human needs, be adopted, we think that the standard of morality will be raised and regard for the sanctity of marriage increased (p. 96).

Guided by these considerations the majority proceed to consider what additional causes should be accepted as grounds for divorce. The first of these is *wilful desertion,* without the consent or against the will of the other party, and without reasonable ground, for a period of three years. "The main reason for introducing this cause as a ground of divorce is that wilful desertion, persisted in, breaks up a home even more than an act of adultery. . . . An unfortunate woman with a large family is left practically in the position of indigent widowhood until her husband dies, and even then she may not be able legally to prove his death." The instance is unfortunately chosen. The cases in which a poor woman with a large family is able to find another man to undertake her responsibilities (unless she has first provided for the children in charitable institutions) are few and far between; while maintenance can be enforced upon the deserting husband just as well under a separation order as under divorce. The economic argument is really beside the mark, and rightly so. Few women would desire a divorce for the sake of bettering their positions if there were not graver reasons behind.

Cruelty is already a ground for judicial separation; *i. e.,* the injured party can obtain protection. The majority consider that divorce is the proper remedy. Cruelty they would define as "such conduct by one mar-

ried person to the other party to the marriage as makes it unsafe, having regard to the risk of life, limb, or health, bodily or mental, for the latter to continue to live with the former." Nothing is said about the cruelty of either parent to the children; it is conceivable that this might be construed as indirect cruelty to the other parent, but there are few mothers who would not prefer to suffer themselves rather than to see their children suffer.

In introducing *incurable insanity* as a ground for divorce, new ground is broken. The reason assigned for including this disease and not others is that "the incurably insane have usually to be removed from their own homes, and are confined and isolated in an asylum or recognized establishment, and anything approaching family life is impossible." The full recommendation is that the insanity which should form the ground of divorce should be certified as incurable, that the insane spouse should have been continuously confined for not less than five years, and should be, if a woman, not over fifty years, and if a man not over sixty years.

We think it necessary to note that this recommendation is in the face of strong evidence to the contrary. It is true that of twenty medical witnesses asked there was a majority in favor, twelve as against eight; but of the eleven who were specialists in mental disease only four were in favor and seven were against. On this point we quote from the Report of the minority:

> The great majority of experts on mental disease who gave evidence were very decidedly opposed to the proposal to make insanity a ground of divorce. This majority included four commissioners in lunacy, the Lord Chancellor's Visitor and a specialist of quite unique authority on this subject, Sir George Savage. His evidence is well summed up in his final answer: "There is no doubt of the individual hardship, and that I have felt. I entered upon it with a feeling, and I must say, rather in favor of the divorce, but the more I have considered the individual reports from these people, and the more I have considered my own forty years' experience, I cannot help thinking that there is not ground enough to justify the alteration." We cannot admit that evidence of this character should be brushed aside as it is in the majority report on the singular ground that witnesses such as commissioners in lunacy and medical officers in asylums "would

object to any enactment which might prejudice in any way the welfare and comfort of those under their charge." That is extremely probable, but we may be permitted to add that they are also the best judges of what would be "prejudicial to the comfort and welfare of those under their care." We are bound, therefore, to accept their verdict that the adoption of this proposal would retard the recovery of the curable, painfully aggravate the lot of many of the incurable, and even help to upset the balance of some who, without being insane, are liable to become so. Without at all underrating cases of individual hardship to the sane partners, we cannot recommend a remedy for them which would be thus crudely callous to all others consequences (p. 182).

The next recommendation is to raise Habitual Drunkenness, which is already a ground for a separation order, into a ground for divorce. It is noteworthy that this recommendation is coupled with conditions aimed at the reformation of the drunkard.

In our opinion, an order of separation, on the ground of habitual drunkenness, should still be possible, so that immediate relief may be afforded to the sober spouse; but such an order should be granted on definite conditions, and should be of a temporary character only. No separation order should be granted unless the applicant can satisfy a court of summary jurisdiction that such proper means as were at his or her command have been used to bring about the reform of the drunken spouse, and that the habitual drunkenness has not been brought about by the applicant. No separation order should be granted by such court for a longer period than two years. During the currency of such order, the court making the order should have the power to compel the inebriate to submit himself or herself to treatment or control on the lines recommended by the Departmental Committee on the Inebriates' Act in 1908. The means used by the court would range from a compulsory pledge of abstinence to guardianship or compulsory commital to an institution.

No court, we hope, would do anything so futile as to administer the pledge to a confirmed drunkard; so that in practice the means to be employed for reformation will be restricted to compulsory confinement in an institution. This would no doubt be desirable, but we fear it will seldom be resorted to, partly because of the reluctance of magistrates to proceed to such an extreme measure, and partly because of the difficulty of finding suitable accommodation for the offenders. If after three years there is no reasonable hope of a cure, then upon

application the High Court is to be entitled to grant a decree of judicial separation or of divorce; if the case is not hopeless, the court is to have power to continue the order.

We note that Mrs. Tennant dissents from the recommendation that habitual drunkenness should be a cause of Divorce, on the ground that this trouble is one "in which the sober partner can and ought to help at the early stages especially, in a very great degree, and that there should be no incentive, in these stages, to abandon the victim to his or her declension."

Finally, it is recommended that *imprisonment under commuted death sentence* should be a ground for divorce, for the curious reason that but for the commutation of the sentence there would, in fact, have been a dissolution of the marriage tie; and that such imprisonment is for life, with reductions on account of good behavior, etc. A study of the figures given shows that these reductions are very considerable, and there seems no sufficient reason for differentiating between terms of imprisonment of this type and others. Here again the Commission have consulted expert evidence, only to brush it aside. A circular was addressed to twenty-seven persons with experience of convict prisons; of these three gave no opinion, seven were in favor of a long sentence being a ground of divorce, and seventeen were against it. It was attempted to discredit the opinion of the seventeen on the ground that eight of them were chaplains, but even this bold measure leaves a majority of expert evidence in the negative. In addition, "the evidence of the Lord Chief Justice was strongly adverse to making imprisonment, in any case, a ground of divorce." On the other hand, Mr. J. A. Spender, one of the signatories, would make all sentences of five years and upwards a ground of divorce. He gives no reason for this severe addition to the penalty already imposed upon the prisoner; the probable result would be to diminish the length of sentences.

Such, then, is the main gist of the Reports. The reader is impressed throughout by the difficulty of the task which the majority set themselves in introducing a number of changes based upon no clearer ground than that of expediency in face of very conflicting opinions as to what in each case *is* expedient. But they intensified the inherent difficulty greatly by the almost cynical attitude which they adopted with reference to the marriage vows: "When two persons enter into the married relationship, they may reasonably be supposed to contemplate the continuance of that relationship during their joint lives with the objects to which we have already referred, and with the risks of the ordinary vicissitudes, changes, and troubles of life which everyone has to expect, and which fall within the reasonable meaning of the expression 'for better, for worse'" (p. 100). Such a construction of the solemn oath of fidelity, restricting it to "ordinary vicissitudes, changes, and troubles," is absolutely barred by the concluding words 'until death do us part.' As well might the soldier construe his oath as binding only so long as he was not exposed to serious danger. The marriage vows cannot be evaded by putting a false construction on them; the only question is, shall the parties concerned be allowed to break them, and, if so, under what conditions?

It is not, of course, necessary that this vow should be taken before entering into the married state; it can be omitted in civil marriage, and it is for the State to determine what construction it places upon the contract made under its laws. But for those who choose to take upon themselves the greater responsibility, it must be recognized that in asking to be freed from it, they are acknowledging their failure to keep their vows. It may be expedient that in certain cases they should be freed, but it is only confusing the issue to represent the vows as not extending to those cases. The fact remains, and no legislation can change it, that loyalty which is prepared to brave everything is on a different level from loyalty which

is prepared to brave only the "ordinary vicissitudes, changes, and troubles of life"; and in legalizing dissolution and remarriage on grounds of expediency, a State is really legalizing a second order of marriage. Some may call it a higher order, some a lower; but it is no longer permanent marriage, and does not stand on the same footing morally as permanent marriage.

The attempt to devise a satisfactory form of temporary marriage introduces at once the difficulty of deciding what are to be sufficient causes of dissolution. There is, to use a hackneyed phrase, no finality about it. As we have seen, some of the causes accepted by the majority seem less weighty than others omitted by them; indeed they are not entirely agreed amongst themselves. This is not a fatal objection; but it does, we think, involve the necessity of periodical revision, as opinion changes as to what constitutes cruelty, drunkenness, and so on. The cruelty of to-day would have been almost disregarded a few generations ago; and we seem to be led to the conclusion that in proportion as we become more refined and sensitive we shall,—as a community,—become less faithful to our comrades and our responsibilities. The gentler will expel the sterner virtues, and we shall live more and more for the pleasure and convenience of the moment.

There is another consideration which seems to tend to the same conclusion. It is sometimes argued that marriage is only a contract like any other, and that like any other, therefore, it should be dissoluble if both parties desire it, or if its obligations are not fulfilled. But the analogy does not hold. The essence of marriage as an institution is that it binds pleasures with responsibilities, and so raises the merely sensuous into the spiritual. Further, in this particular contract it is nearly always the case that the most obvious pleasures come first, while the most difficult responsibilities outlast them,—at any rate in the case of the husband. (The most *obvious* pleasures, for the deepest joy of married life comes

only to those who have tested its powers through prolonged fidelity.)

Now what the extreme advocate of divorce asks is, that having taken all the pleasure and profit to be got out of the contract, he should abandon its responsibilities. His plea is: "I cannot fulfill my pledge,—it is too difficult for me." Were this all, it would be met by separation, but he asks more. He says: "Let me try again; condone my failure, give me absolution from my vows, and another opportunity on the same terms." The difficulty in granting his request is clearly that what he is asking for *may* be,—not an opportunity for doing better, but only another opportunity for gratification without responsibility.

We are not going beyond the mark in saying that this is what some desire. Very respectable witnesses before the Commission thought that there should be "divorce by mutual consent"; that it would be an "admirable thing" if marriage could be put an end to by the consent of the parties; that "if a man cease to desire his wife, or if he desire another woman," he should be entitled to apply for divorce; that "nothing but love should hold two together in this most sacred of all bonds." It is hard to see how these views are consistent with a desire for marriage at all. The casual connections which are desired can be made at will; and why should the State be expected to recognize them only in order to dissolve them again whenever the wandering inclinations of the persons concerned fasten upon a new object? Marriage is an institution involving responsibilities which they clearly do not intend to accept; they had better therefore let it alone.

We recognize, however, that such cases are on a very different footing from those contemplated by the Commissioners. For the most part (though not in dealing with the respondents under separation orders), they have had in mind cases of great suffering and hardship, the endurance of which cannot in their view be expected from

ordinary humanity. We do not consider it an argument against their recommendations that divorce would be thereby increased. There would be no reason for making the proposed changes, if no one were to avail themselves of the greater facilities. If there is a demand for a grade of marriage which is not permanent, it is arguable that it is better to recognize it, than to leave the way free for the promulgation of 'advanced' views under cover of 'hard cases.' But it is a wise saying that hard cases make bad law; and the legislator will have to move very carefully if he is not to cause more suffering than he relieves.

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THE ETHICS OF INDUSTRY.

J. DASHIELL STOOPS.

IN primitive society the moral elements of experience were as immediately present in carrying on the processes of labor and industry as they were in the processes of education and religion. That the Nazarites among the early Hebrews, of whom Samson was one, took a vow to sow no seed, to drink no wine, to build no houses, but to live in tents, shows that the methods of industry in the earlier nomadic period were inseparable from current moral and religious ideals. Later on, when the old nomadic life had given place to agriculture, this new economic process was just as essentially religious and moral as the old nomadic ideal. As a proof of this we need only refer to the fact that an ordinary citizen, Naboth by name, could hold his family estate, "the inheritance of his fathers," even against the desires of the king (I Kings 21 : 3). The primitive nomadic, and the later agricultural, method of life was therefore an inseparable aspect of a certain moral and religious view